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EPA: Fracking study helped drive Range case to dismissal

Mike Soraghan, E&E reporter

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Top U.S. EPA officials were concerned about Range Resources Corp.'s participation in a national hydraulic fracturing study as they prepared to withdraw a high-profile Texas pollution case against the oil and gas company last year, emails obtained by *EnergyWire* show. They also show that the agency was worried EPA officials could get dragged into court in a related lawsuit.

The emails, released yesterday in response to a Freedom of Information Act request, also show that then-Administrator Lisa Jackson took a close interest in the case. She hosted several meetings on the case and weighed in when it was over.

"I know it has been a hard few weeks, but I think it is the best way forward," Jackson wrote to Assistant Administrator Cynthia Giles on March 29, the night before the case was dropped.

The EPA officials were concerned enough about the study that they reviewed Range executives' letter about it a day before it was officially sent to EPA. And the talking points they prepared for the day the case was withdrawn specifically cite participation by Range as an advantage of dropping the case.

"Range will also provide useful information and access to EPA in support of EPA's scientific inquiry into the potential impacts of energy extraction on drinking water," the EPA memo states. The study is a broad, multiyear look at how fracturing and drilling affect the safety of drinking water.

But it is not clear what EPA gained. Range spokesman Matt Pitzarella said the company is not part of the study, due to be completed in 2014.

"We are however, and have been, partners with the DOE [Department of Energy] and NETL [National Energy Technology Laboratory] on various studies and testing of BMPs [best management practices]," Pitzarella explained in an email.

The messages, between both political appointees and career staff, provide a glimpse behind the scenes at a crucial point in the Obama administration's handling of the nation's shale boom.

In the weeks before the case was withdrawn, EPA had also agreed to retest groundwater in Pavillion, Wyo., that it had deemed contaminated with hydraulic fracturing fluid and announced that its high-profile intervention in Dimock, Pa., had yielded benign results. The three-pronged retreat was a dramatic turn away from what had been an assertive posture in shale drilling cases.

The Associated Press has reported previously the link between the withdrawal of the case and the national study (*EnergyWire*, Feb. 12). The emails released yesterday offer the first details of EPA officials' concerns and the extent of their interest in gaining Range's participation.

But the emails, heavily redacted in some places, do not offer a clear reason for EPA's legal retreat, which has never been fully explained in public. EPA's Office of Inspector General belatedly confirmed yesterday in an [email](#) that it is currently investigating how the agency got into the case and how it got out.

Timeline

Dallas-based EPA Regional Administrator Al Armendariz brought the high-profile Safe Drinking Water Act case in December 2010. In an emergency order, the agency alleged that Range's Barnett Shale gas wells were leaking methane gas into two homes in the Silverado subdivision in Parker County, west of Fort Worth. The order also accused the Texas Railroad Commission, which regulates oil and gas but not trains, of failing to protect the homeowners in the neighborhood.

Range denied the accusations then and denies them now. Company officials also stress that they did not settle the case -- EPA withdrew it.

The Railroad Commission exonerated Range after a January 2011 hearing in which EPA and the homeowners didn't testify.

The first hints of settlement came about two months later, apparently arising out of a discussion between Jackson and former Pennsylvania Gov. Ed Rendell, who was newly out of office. An EPA lawyer wrote that Rendell "proposed certain terms to the Administrator," acting as "a spokesman for Range." Rendell has confirmed he interceded on behalf of Range Resources Corp. but said he didn't go in with a settlement proposal (*EnergyWire*, Feb. 7).

Discussions kicked into high gear about a year later, as Jackson prepared to meet with Ignacia Moreno, head of the Environment and Natural Resources Division at the Justice Department, which was in charge of prosecuting the case.

The March 5 meeting drew a reaction when Giles learned of it.

"I am not comfortable with where we are re meeting with DOJ on Monday, and would like to discuss with you tomorrow [morning]," Giles emailed Jackson.

Two days later, Jackson emailed Giles, head of EPA's Office of Enforcement and Compliance Assurance, in the evening.

"Hi. Can I get an update tomorrow morning on Range?" Jackson wrote. Giles responded three minutes later: "Yes -- will set it up."

No details of that March 8 meeting were disclosed. But that day, Giles called Range's attorney, leaving a message "that we want to get this back on track and to make a serious attempt to see if we can resolve the matter quickly." Deputy Assistant Administrator Steven Chester lined up EPA's Office of General Counsel and Department of Justice lawyers to do a call the next day.

It was understood at that point that both cases were going to be dropped.

"Dismissing both matters is implicit," Giles wrote to a colleague.

A swipe at enforcement and 'an additional concern'

The acceleration in the pace of the case came before the March 21, 2012, Supreme Court ruling in the *Sackett v. EPA* case that took a broad swipe at EPA's enforcement authority. Some have attributed EPA's decision to bail out of the Range case to its loss in the *Sackett* case.

Another factor in EPA's reasoning appears to have been a lawsuit winding its way through state court and whether EPA officials could get pulled into it. A Texas judge had dismissed landowner Steve Lipsky's case against Range because the Railroad Commission had ruled the company wasn't at fault. But Range's defamation and conspiracy counterclaim against Lipsky was going forward.

Bernadette Rappold, director of EPA's Special Litigation and Projects Division, indicated to colleagues that EPA employees could get dragged into the case. In an email titled "an additional concern," she explained that EPA could become a key part of the case.

"Range's conspiracy claims expressly reference EPA," she wrote, including Armendariz and two other EPA staffers.

"I understand that Range started this week on the process for trying to get depositions of three EPA Region 6 employees," Rappold wrote on March 16.

But the national study into hydraulic fracturing loomed large for the headquarters team figuring out what to do with the Range case.

The study was urged on EPA by members of the House Appropriations Committee when the chamber was controlled by Democrats. It has been contentious from the start,

as drilling critics packed hearing halls for the "scoping" process, environmental groups and industry lobbied to get their favored scientists on the peer review panel and the agency tangled with Halliburton Co. about what information the company should hand over.

In a March 14 memo marked "CONFIDENTIAL," Rappold laid out Range's actions regarding the national study. The memo noted that Range had "denied access" to sites in Pennsylvania, while adding that "it continues to provide access to USGS [U.S. Geological Survey] and DOE."

EPA senior policy counsel Bob Sussman noted in emails that officials from the EPA research branch conducting the fracturing study would be joining a conference call about the case.

Studies with Range

Range is one of the major drillers in Pennsylvania, but nothing in the emails released yesterday explains why the participation of Range, one of many shale drilling companies, was important to the study.

Pitzarella said that Range wasn't going to work with an agency that was pursuing it in court.

"Our prior refusal to voluntarily participate in the [hydraulic fracturing] study was the same as it would be with anyone that we were locked in a legal dispute with," Pitzarella said. "If we were in a suit with a contractor over something we strongly disagreed with, we would suspend other work with that contractor if we could. That was our approach with the EPA as well."

At the time the case was withdrawn, it looked like Range would participate. On April 4, 2012, several days after the case was dropped, Range CEO Jeff Ventura and Executive Chairman John Pinkerton signed a [letter](#) to EPA that is still posted to the company's website.

"We are pleased that, with the matter of the emergency order resolved, Range is now able to cooperate with the agency in providing access to study sites as part of the EPA's hydraulic fracturing study," they wrote.

The night before, Giles, Sussman and EPA Deputy Administrator Bob Perciasepe were on an email thread examining a draft of the executives' letter.

"Let's discuss comments on the draft letter," Giles wrote, above a slightly different version of the sentence about the study. "What do you think?"

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